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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of:
BRICKCHURCH ENTERPRISES, INC., Main Case No.
Debtor. 22-70914-ast

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United States Bankruptcy Court
271-C Cadman Plaza East
Brooklyn, New York

October 6, 2022
11:04 AM

B E F O R E:
HON. ALAN S. TRUST
U.S. BANKRUPTCY JUDGE

ECRO: ELECTRONIC RECORDING

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Status Hearing

Motion to Dismiss Case

Motion for Clarification and/or Reconsideration of Courts
August 31, 2022 Orders Regarding (I) Debtors Motion for Entry
of an Order Extending the Debtors Exclusive Periods to File a
Chapter 11 Plan and Solicit Acceptances Thereof; (II) JGBs
Motion to Dismiss Pursuant to 11 U.S.C. 305(a) and 1112(b) of
the Bankruptcy Code; and (III) JGBs Motion for Relief From
Automatic Stay Pursuant to Section 362(d) of the Bankruptcy
Code

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A P P E A R A N C E S (All present by video or telephone):

SIMMONS LEGAL PLLC

Attorneys for Debtor
1330 Avenue of the Americas
Suite 23A
New York, NY 10019

BY: CAMISHA L. SIMMONS, ESQ.

HAYNES AND BOONE, LLP

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Attorneys for Sotheby's International Realty, Inc.
27 Crimson King Drive
Bear, DE 19701

BY: MARY AUGUSTINE, ESQ.

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UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee
560 Federal Plaza
Central Islip, NY 11712

BY: WILLIAM BIRMINGHAM, ESQ.

ALSO PRESENT:

Louise T. Blouin, Brickchurch Enterprises, Inc.

BRICKCHURCH ENTERPRISES, INC.

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1 P R O C E E D I N G S

2 THE CLERK: Starting the 11 o'clock calendar,
3 Brickchurch Enterprise, Inc., Case Number 22-70914.

4 THE COURT: I'll take appearances, please, starting
5 with the debtor.

6 MS. SIMMONS: Good morning, Your Honor. Camisha
7 Simmons on behalf of the debtor, Brickchurch Enterprises, Inc.

8 THE COURT: All right. Anyone else for the debtor?

9 MS. BLOUIN: Louise Blouin.

10 THE COURT: All right. And then Office of the United
11 States Trustee?

12 MR. BIRMINGHAM: Good morning, Judge. William
13 Birmingham, Office of the United States Trustee.

14 THE COURT: Right. Secured creditor?

15 MR. KANOWITZ: MR. KANOWITZ: Yes, Your Honor. Good
16 morning, Richard Kanowitz of Haynes and Boone on behalf of the
17 JGB entities.

18 THE COURT: All right. And any other appearances.
19 All right. So --

20 MS. AUGUSTINE: Good Morning, Your Honor. Mary
21 Augustine on behalf of Sotheby's International Realty, Inc. I
22 apologize, Your Honor. I'm covering two hearings this morning
23 simultaneously because Mr. Saccullo was called on to an
24 emergency hearing. So I don't have really a position to
25 provide the Court on, but I just wanted Your Honor to be aware

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1 of why I was appearing instead of Mr. Saccullo.

2 THE COURT: And you're appearing on behalf of
3 Sotheby's?

4 MS. AUGUSTINE: Yes.

5 THE COURT: All right.

6 MS. AUGUSTINE: Yes, Your Honor.

7 THE COURT: Thank you. Any other appearances?

8 MR. ISBELL: Your Honor, this is John Isbell. I'm not
9 making an appearance, but I am listening the phone. I'm an
10 attorney for Bay Point Capital Partners, the proposed lender to
11 the debtor.

12 MS. SIMMONS: And, Your Honor, with that, as a
13 preliminary matter, the debtor will be withdrawing its motion
14 to seal. And I know Mr. Birmingham wrote a great objection to
15 the motion to seal. And he's not going to get the opportunity
16 to argue that with -- we will be filing an unredacted term
17 sheet. And Bay Point Advisors, LLC is the proposed DIP lender.
18 And I believe Charles Andros with Bay Point, the lender's
19 representative, may also be on and attendance at this hearing.

20 So to the extent, Your Honor, that any -- you're
21 taking any witness testimony today, the lender is available to
22 answer any questions regarding the proposed DIP financing.

23 THE COURT: Well, I'm not planning to take any
24 testimony today. I have both -- right now what I have in front
25 of me is a motion to reconsider or clarify the orders that I

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1 entered following the lift stay hearing that was held August
2 31st.

3 As the parties know, after a contested evidentiary
4 hearing, the Court made a bench ruling. And that bench ruling
5 that was made on August 31st was memorialized in two orders
6 that were entered, one at docket item 104, that's an order
7 concerning exclusivity, and the other was a lift stay order at
8 docket 105, conditionally granting stay relief to JGB.

9 Both of those orders had the same condition precedent
10 or subsequent, depending on how you look at it, that the stay
11 would lift and exclusivity would temporarily be extended unless
12 the debtor either files a sale motion -- and I'll just tell you
13 what the order says. It's fairly short. Made in effect until
14 midnight on September 30th unless the debtor filed a contract
15 for the sale at 366 Gin Lane property that is bona fide
16 noncontingent for a sale price of no less than fifty-two
17 million dollars payable in cash at closing or seeking approval
18 to enter into a contract for further refinancing or takeout
19 financing of 366 Gin Lane that is bona fide contingent for no
20 less than fifty two million dollars with closing date no later
21 than November 9. That would have been the same sale closing
22 date.

23 The debtor has moved to clarify and/or reconsider that
24 order. I don't see a sale motion has been filed. It looks
25 like the debtor filed the motion for failure to resolution

1 telling 364(b) DIP financing. And that's not obviously on for
2 today. That's on for October 26th. And so I'm not taking
3 testimony today because I'm not considering a DIP financing
4 motion today. It's not in front of me.

5 I think the first issue is what is it that the debtor
6 is saying the Court got wrong in the stay relief or the
7 exclusivity order. And now is the debtor also saying but we
8 are in compliance with those orders because of the motion that
9 was filed at docket 115?

10 MS. SIMMONS: Well, Your Honor, first of all, the
11 debtor is saying -- it's the debtor's position of the debtor is
12 in compliance with those orders. But, Your Honor, we should
13 have asked questions at the August 31st hearing when you made
14 your rulings. In terms of takeout financing, we should have
15 asked why fifty-two million instead of the amount of the
16 pre-petition secured debt. So one of the questions is why Your
17 Honor set the takeout financing at fifty-two million.

18 And then I guess another additional question that I
19 show did the Court -- which we didn't ask, how did the Court
20 arrive at the fifty-two-million number as opposed of any other
21 number that the Court could have ordered for the takeout
22 financing.

23 And also on our motion for clarification on our
24 reconsideration, Your Honor, I noted that --

25 THE COURT: Well, let me -- Ms. Simmons, hang on. Let

1 me stop you there.

2 Neither of those are grounds to reconsider -- to ask
3 the Court to reconsider a matter. Asking trial judge why did
4 you reach that decision, that's not a motion to reconsider.
5 That's an argument that you make on appeal. You can argue that
6 the record was not adequate for the Court to make the ruling
7 that it made. But you don't come back to a hearing later and
8 say, hey, Judge, we don't know how you got there; would you
9 might explaining that to us. That's not a motion to
10 reconsider.

11 MS. SIMMONS: Yeah. Your Honor, that's why we -- it's
12 a motion for clarification and/or reconsideration and not
13 simply a motion for reconsideration, to the extent the Court
14 could clarify.

15 THE COURT: But what part of the --

16 MS. SIMMONS: We're trying to apply it as best we
17 could.

18 THE COURT: What part of the order was unclear that
19 needs clarification?

20 MS. SIMMONS: I guess in terms of the fifty-two
21 million. If you take out the pre-petition secured debt, should
22 the takeout number be equal to the pre-petition secured debt.
23 And I guess we weren't clear on that point. And so we are
24 asking for clarification on that.

25 But given the discussion regarding a deadline, we did

1 file all of the required documents that needed to be filed on
2 September 30th to meet that deadline. And as you see in the
3 term sheet, given that we have a pending motion, the lender is
4 going to lend up to that fifty-two million.

5 And so we -- and our position is that what we filed on
6 September 30th, it was in compliance with the Court's orders.
7 To the extent that the Court would want to take out financing
8 to be equal to the pre-petition secured debt, that is what
9 we're seeking clarification on.

10 THE COURT: All right. Well, the debtor and the
11 secured creditor worked out the language of the order. I
12 wouldn't have signed it if I thought it was vague or unclear.
13 I don't think the order is unclear at all. I don't see
14 anything to clarify.

15 But Mr. Kanowitz, is your client have a position on
16 the motion to clarify?

17 MR. KANOWITZ: Yes, Your Honor. It should be denied.
18 You made it crystal clear what your conditions are for the
19 debtor to satisfy, as well as the reason why you selected
20 fifty-two million. It wasn't just to take out JTB. As you
21 said it on the record, and we cited back in our objection to
22 the motion to reconsider that's on the docket, you said to pay
23 all creditors. So that's where we're at concerning that
24 motion. We believe it was just filed to delay this proceeding
25 yet again. And we asked the Court just deny the motion to

1 reconsider.

2 THE COURT: Thank you.

3 Mr. Birmingham, does your office have a position on
4 the debtor's motion to clarify or reconsider?

5 MR. BIRMINGHAM: No, Judge. We don't take a position
6 on it.

7 MS. SIMMONS: And, Your Honor, another thing we noted
8 in the motion to clarify is that -- and I know the Court is
9 aware of the Suffolk County cyberattack. So from what I
10 understand, they're up and running beginning October 3rd. And
11 but we just don't know if there's going to be any sort of delay
12 or lag in terms of the closing, if it's going to affect it.
13 And if it is, we wanted to flag that for the Court in terms of
14 maybe having some sort of wiggle room with closing if there is
15 going to be any delay resulting from the Suffolk County records
16 having been down because of the cyberattack and whether or not
17 there's a large backlog that will delay anything. So we wanted
18 to find out for the Court.

19 THE COURT: All right. Well, a couple of things that
20 I think you all already know, but if not, let me repeat it for
21 the benefit of the record.

22 In the context of the evidentiary hearing on stay
23 relief, the debtor submitted the appraisal testimony of Mr.
24 Vargas, who valued the 366 property at 67.5 million dollars.
25 That was as of August 1, 2022. The debtor also provided the

1 affidavit testimony of Mr. Gifkin (sic) of Net Seekers who,
2 among other things, testified, "Based on our experience and
3 market research, we believe 366 Gin Lane, Southampton, will
4 market in the range of sixty-two million dollars to sixty-five
5 million dollars within a marketing period of less than 180
6 days, et cetera.

7 Obviously there was conflicting testimony, that JGB
8 thought that the value was significantly lower. But I remind
9 you all of that for a benefit of the record as I deny the
10 motion to reconsider and/or clarify. I don't believe an error
11 was made by the Court, either or an error and fact-finding or
12 an error in the application of the law to the facts in reaching
13 the ruling that later became docket items 104 and 105. I don't
14 see anything unclear in either order that needs to be
15 clarified.

16 And certainly if the debtor or JGB thought there was
17 something unclear on the order, they would have either
18 rectified that before submitting it on consent to the Court to
19 enter or would have been unable to agree on the form of an
20 order. They're able to reconcile that. So not being able to
21 comply with an order is not a basis to seek, to clarify, or
22 reconsider.

23 And that then turns me to part 2, which is -- I'm not
24 sure if this is in filed papers or not, Ms. Simmons, but the
25 debtor now apparently is saying, oh, we have complied with

1 prong 2 of the order by filing the financing motion, which is a
2 docket 115.

3 MS. SIMMONS: Yes, Your Honor. We filed the motion to
4 approve the financing for fifty-two million, which is set for a
5 hearing for October 26th. And are have made the lender
6 available, of course, today. But we're ready to move forward
7 with that fifty-two million in financing. And the lender, of
8 course, and their counsel are on the call today.

9 THE COURT: All right. The terms of the order are
10 that the financing for no less than fifty-two million dollars,
11 that the financing the bona fide and noncontingent. So those
12 are three different prongs. We I guess now know who the
13 proposed lender is because Mr. Isbell appeared for Bay Point
14 capital. And you all can tell me whether or not --

15 MR. ANDROS: Hey -- hey -- she's -- Your Honor, I'm
16 sorry. This is Charles Andros. I was on mute before, but I'm
17 the phone.

18 I'm on an airplane that's about to take up about ten
19 minutes. But John Isbell, our counsel, can speak for us.

20 THE COURT: What is your name again?

21 MR. ANDROS: Charles Andros.

22 THE COURT: All right. All right. Thank you, Mr.
23 Andros. Go ahead and disconnect.

24 All right. So are there any closing contingencies?
25 And is the loan for no less than fifty-two million dollars?

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1 MS. SIMMONS: There are no closing contingencies, Your
2 Honor, other than the typical bargaining and any of -- oh, Mr.
3 Andros, are you speaking?

4 MR. ANDROS: I'm here.

5 THE COURT: Oh, yeah. I thought you were speaking.

6 But in terms of the -- there are no contingencies,
7 Your Honor. There the a regular closing conditions that you
8 have in any real estate transaction or lending transaction and
9 every commitment by a lender. There are certain closing
10 requirements that are listed in every lending transaction and
11 real estate transaction. So there are no contingencies other
12 than we need to -- there's closing requirements that must be
13 met by the time we close on November 9th.

14 THE COURT: Mr. Isbell, are there any closing
15 contingencies?

16 MR. ISBELL: Thanks, Your Honor. Obviously, giving
17 claim title to the property is 1, because as was made earlier,
18 there was a problem with getting title until recently.
19 Otherwise, the (indiscernible) is in receipt of the bankruptcy
20 court order. That's satisfactory to us. There will be closing
21 documentation (indiscernible) that order that will set forth
22 the terms of this term sheet. But we took out every
23 contingency we could other than the ones that we have to have,
24 which is the title and Bankruptcy Court approval.

25 THE COURT: The term sheet such as we have it requires

1 that the loan be executed by the debtor as well as the
2 nondebtor with the Court releasing he nondebtor affiliate,
3 Aberdeen Enterprises, and a personal guarantee executed by
4 Louise Blouin and then provides for, again, the loan agreement
5 that obviously nobody has, and then the origination fee of nine
6 percent of the loan amount and the loan amount being defined as
7 up to fifty-two million dollars, which in the Court's
8 experience means anything from ten dollars to fifty-two million
9 dollars. So am I missing something there on whether -- your
10 client's not ready to wire fifty-two million into Richard
11 Kanowitz's firm's trust account or any other account today, are
12 they?

13 MR. ISBELL: Your Honor, I don't know what we have as
14 in our accounts, but we would not find a buyer prior to
15 closing.

16 THE COURT: Say it again.

17 MR. ISBELL: We had planned to wire the fifty-two
18 million at closing, Your Honor.

19 THE COURT: Mr. Andros, can you mute your phone if you
20 haven't yet complied with TSA directive to power it off?

21 Mr. Kanowitz?

22 MR. KANOWITZ: Yes, Your Honor. We filed a statement
23 in connection with our carried motion to dismiss and opposition
24 to continuation of this Chapter 11 case. It's docket 120. I
25 won't regurgitate everything that's in there. But there are

1 some very big points that Your Honor is already picking up on.

2 First, this term sheet does not comply with Your
3 Honor's orders. It is not solely between the debtor, a lender
4 for fifty-two million, bona fide noncontingent. This is
5 another Hail Mary to delay this proceeding and allow the debtor
6 to litigate against JGB and its claim.

7 But assuming Your Honor wanted to allow for the
8 continuation of this case, the DIP financing as proposed is
9 problematic, problematic in the sense of the fees and expenses
10 that this debtor is going to incur is actually less than -- now
11 when you take those out less than the debt to JGB. So we gave
12 a payoff letter to the debtor the other day, and it was forty-
13 seven million dollars. And the clock is still moving with
14 respect to interest and attorneys' fees that are accrued.

15 Aside from that, there's also going to be an indemnity
16 obligation that's going to be required to be funded because
17 this debtor keeps -- what I would keep saying the big lie
18 theory that JGB somehow had misconduct in connection with this
19 loan, the foreclosure, or otherwise. So right now we're at
20 forty-seven million dollars.

21 If you look at the loan, it's fifty-two million
22 dollars or up to, like you said, but they want 7.3 million
23 dollars taken out of closing. So even if you said, okay, let's
24 go forward with this financing option -- and that's what it is.
25 It's an option. It's not a bona fide noncontingent loan

1 agreement that can be closed ASAP or even if you wanted to give
2 the benefit of the doubt to the types of issues that the debtor
3 raised in the motion for reconsideration concerning the county
4 clerk's office, this is going nowhere, Your Honor. It also
5 involves nondebtor entities, nondebtor collateral, which this
6 Court respectfully does not have jurisdiction over. It was one
7 of the points Mr. Robins and I pointed to early in this case.
8 It was the hope to market the compound.

9 So what this is is a proposal that is very expensive
10 for the debtor. It doesn't work in this Chapter 11 case. It
11 doesn't get my client paid. the debt requires nine debtor
12 commitments and nondebtor collateral to actually move forward
13 on. None of that, Your Honor, satisfies Your Honor's orders.
14 And we would respectfully request that the time is now come
15 five months later, to dismiss this case. Let's go back to the
16 state court. We'll tee up our auction process there. If the
17 debtor is able to get financing outside of bankruptcy, they'll
18 be able to take us out.

19 But to suggest to Your Honor that we should stay in
20 bankruptcy, we should move forward on this path with a detailed
21 term sheet that's a contingent term sheet, subject to final
22 documentation, like you said, that you have a plan that seeks
23 to litigate against JGB, which Your Honor has already pointed
24 out to them under Rooker-Feldman, we start with the state court
25 judgment and we go from there.

1 We're really just going in circles. And from my
2 perspective and the client's perspective, we're just -- it's
3 getting worse, not better. Your Honor, we would ask that Your
4 Honor dismiss this case or alternatively lift the automatic
5 stay for the debtors failure to comply with Your Honor's
6 crystal clear, straightforward order.

7 And maybe this is the big point to take away for
8 everybody. If this property, 366 Gin Lane, was worth what the
9 debtor says it was, they would be able to meet Your Honor's
10 order for fifty-two million dollars in a sale or a refinancing.
11 They failed to do that to date, Your Honor, to date. And it's
12 interesting that this is a status conference and Mr. Gifkins is
13 not on the line. They've only received one thirty-eight-
14 million-dollar offer for the purchase of 366 Gin Lane. They
15 have not moved forward on that. And they have not moved
16 forward with that because Mr. Blouin does not want to sell the
17 property. She wants to leverage the proceedings, whether it's
18 in state court or Bankruptcy Court, for her benefit. And
19 that's not the purpose of Chapter 11.

20 So again, Your Honor, respectfully, you can take a
21 look at the term sheet. You can see all the deficiencies we
22 pointed out in our statement that was filed at docket120. You
23 can come to your own conclusion. But we are going nowhere with
24 this term sheet. We're going to only set up yet another
25 contested hearing on a DIP financing, further contested hearing

1 on the plan process. All the while my client has not been paid
2 in many, many years with interest racking up. Thank you, Your
3 Honor.

4 THE COURT: Thank you, Mr. Kanowitz.
5 Mr. Birmingham?

6 MR. BIRMINGHAM: Judge, the only thing that we -- that
7 we would really say in terms of whether there's been compliance
8 is that since it's up to -- it's a redacted term sheet, we --
9 now I know who it is, Bay Port Advisors, LLC. But we've not
10 had the opportunity to look into them whatsoever. So that's
11 whether they have the availability to -- or the funds to
12 actually lend to the debtor in order to reach the
13 fifty-two-million-dollar threshold.

14 Aside from that, the term sheet does not look as if
15 it's a binding noncontingent offer. It just seems it's more of
16 an initial salvo in terms of a negotiation to eventually get to
17 lending. So --

18 THE COURT: And then, Ms. Simmons or Mr. Isbell, is it
19 Bay Point, P-O-I-N-T or P-O-I-N-T-E, Capital or Bayport? And
20 do they have an office address that one of you can put on the
21 record?

22 MR. ISBELL: Thank you, Your Honor. This is John
23 Isbell.

24 It's Bay Point, B-A-Y P-O-I-N-T, Advisors, LLC is the
25 general partner for the fund. The fund that would actually

1 make the loan would be Bay Point Capital Partners Sea, LP.
2 It's a 400-million-dollar hedge fund based on one of Georgia.
3 Address 3050 Peachtree Road, Atlanta, Georgia 30305.

4 In terms of the term sheet, Your Honor, we've put up
5 252 million dollars because the debtor thought that there was a
6 chance that that number could be reduced to forty-two million
7 based upon their motion. It wasn't because we did not intend
8 to meet the fifty-two-million-dollar financing requirement. So
9 we can take the up-to based upon the Court's prior rule.

10 Also, there was a misinformation stated that the
11 origination fee would lower the financing to below two million
12 dollars. That is not correct. It would be added to the fifty-
13 two million. So the net proceeds would be fifty-two million to
14 the estate after the loan was completed. I just wanted to
15 clarify that for the record.

16 THE COURT: So the actual loan amount might be closer
17 to \$58 million with all was said and done?

18 MR. ISBELL: Correct, Your Honor. I don't know the
19 exact math in front of me. But certainly it'll be
20 significantly more than fifty-two.

21 THE COURT: All right. All right. Here's where the
22 Court thinks we are. The debtor's tilt seems to be that's
23 they're in one direction, which is let us play the string out
24 of this financing and see if, in fact, we get the money. The
25 JGB take is they've already not complied, and let's just go

1 ahead back to state court and foreclose. From the Court's
2 vantage point, these are not inconsistent. In other words, I
3 let that the debtor going forward on the financing hearing and
4 let JGB on renoticing the foreclosure sale. The debtor gets
5 the money and pays JGB off, there's no reason to foreclose. If
6 the debtor doesn't get the money to pay GP off, then you got a
7 foreclosure sale ready to go. So there would be no delay in --
8 dual tracking is a sometimes overused expression for that. But
9 in Court's vantage point, there's no delay or prejudice from
10 either party's standpoint in dual-tracking it.

11 I can't tell on the face of it -- and again, the loan
12 amount -- the amount at least appears to be moving but moving
13 potentially in the right direction. It's a somewhat thin but
14 I'm sure standard term sheet. And maybe the debtor will
15 actually meet the obligations of the loan and actually close on
16 it in time to pay off JGB by the November 9 deadline.

17 If there was some intervening act that doesn't allow
18 Suffolk County to actually do its part, I'm not sure what that
19 would be because this is the borrower and the lender showing up
20 virtually or in person at a closing table, signing documents,
21 wiring the money, paying off JGB, and then sending in the
22 mortgage documents to be recorded which can make a matter of
23 days or weeks under normal circumstances anyway, I'm not sure
24 what the impact of the cyberattack on Suffolk County would be
25 here that might delay the closing.

1 But from the Court's vantage point, so that there is
2 no misunderstanding or something sought to be later clarified,
3 JGB is holding the foreclosure judgment and sale. That is the
4 amount to be paid, which would include amounts that are
5 reliable to continue to accrue until that foreclosure judgment
6 and under the Bankruptcy Code. Typically those are
7 post-judgment interest and reasonable attorneys' fees. There
8 may be other items the state court allowed to be included. I'm
9 sure you all can figure out how much those are.

10 But as I've said, at prior hearings, we're not -- this
11 Court is not here to litigate the amount that's owed to JGB
12 under applicable nonbankruptcy law. The state court has
13 already done that. The Court will credit that as the amount to
14 be paid with the allowable post-judgment interest and
15 attorneys' fees and costs that were allowed under the judgment.
16 So that part is relatively simple in terms of calculating the
17 amount to be paid at JGB by November 9th. So you got to close
18 it first with the wire transfer instructions.

19 There are sometimes some de minimis arguments about
20 the parties, maybe 12,000 or 20,000 or 400 dollars apart on the
21 exact payable amount. I'm sure you can work that number out
22 between now and the October 26 hearing so that everybody knows
23 exactly what JGB is to get by the November 9 deadline the Court
24 has already set.

25 Now, that there may be other creditors in the estate

1 who need to be paid. I'm sure the debtor has looked at the
2 claims register. I'm sure that there are administrative
3 expenses. There are at least four sets of retained
4 professionals. And so there may well be and all too well be
5 money left over after JGB is paid. They're still a bankruptcy
6 estate to administer after that, other creditors, et cetera,
7 both administrative and unsecured. Maybe there are tax claims.

8 As far as the debtor's plan is concerned, if the
9 debtor wants to have a confirmation hearing at the same time,
10 we've got a lot of work to do pretty quickly to get that teed
11 up. But the Court is essentially making that your standard
12 liquidating plan that says we're going to pay everybody in the
13 order of statutory priority. If the debtor wants to reserve
14 state law rights to continue to appeal the state court
15 foreclosure judgment, you all can do that. But the amount
16 that's going to have to be paid here in this process is the
17 amount of the state court judgment, as I've said now three
18 times. And if you later end up getting it reduced or remitted,
19 go get it from -- go get it from JHB. But I'm not holding up
20 the bankruptcy process for that appeal to continue to play out.

21 I 've already denied the motion to reconsider and/or
22 to clarify. I'm going to -- we can use the October 26th.

23 THE CLERK: We just have the motion from 12 o'clock.

24 THE COURT: Okay. So October 26 at 11:30 a.m. right
25 now is the financing motion. That will be conducted in person,

1 in person. And my courtroom will send out the parameters for
2 that hearing. I'm not otherwise modifying either of the docket
3 104 or docket 105 orders.

4 I'm also not making the finding that the offer that
5 was filed at docket 115 meets the terms on its face of the
6 order, of either order. But again, in the interest of
7 preserving the status quo and avoiding harm or prejudice to
8 either the estate or the lender, I am allowing the lender to go
9 ahead and post for sale, that said to be held earlier than
10 November 14th, Mr. Kanowitz. No earlier than November 14th of
11 2022 for the obvious reasons. There's a financial closing
12 date, there's a pay JGB date. There may be clearing with the
13 wire, et cetera, et cetera. So no reason to run out and incur
14 additional unnecessary expenses on a foreclosure sale that may
15 or may not occur. But again, if JGB is not paid by the
16 November 9 date, then you have a foreclosure date ready to go.

17 I will ask Mr. Kanowitz and Ms. Simmons, if you all
18 will work on a form of order from today's hearing.

19 Anything else that we need to take up this morning?

20 MR. KANOWITZ: Yes, Your Honor. Just so there's no
21 misunderstanding, because we've had too much people saying
22 wrong things in this court already, we're going to submit an
23 order that grants the lift stay relief sought by as set forth
24 and modified by Your Honor's order concerning the sale or
25 auction, if you will, in state court. What happens to the

1 motion to dismiss? Does it get carried as well, please?

2 THE COURT: I believe we've already got -- don't we
3 have an adjourn date already on that?

4 MR. KANOWITZ: It was today, Your Honor.

5 THE CLERK: It was for today.

6 THE COURT: Oh, that was on for status.

7 THE CLERK: Yes. So we need to just adjourn it to the
8 10/26 at 11:30.

9 THE COURT: We didn't have a date after that. I'll
10 carry the motion to dismiss then also to the October 26th at
11 11:30.

12 MR. KANOWITZ: Very good, Your Honor.

13 MS. SIMMONS: Your Honor, in terms of the Court
14 honoring the state court judgments pending resolution in state
15 court, we want to state for the record that that referee report
16 didn't award attorneys' fees. So that is something -- I know
17 Your Honor pointed out that our attorney fees are as part of
18 their claim. But in the referee report itself, there weren't
19 attorneys' fees awarded in the state court.

20 MR. KANOWITZ: Your Honor, if I may address that.

21 THE COURT: Sure.

22 MR. KANOWITZ: So Ms. Simmons yet again misstates the
23 record. What happened in the state court was 310,000 dollars
24 of attorneys' fees were to be put forth in an evidentiary
25 hearing. Instead of going forward with that 310,00-dollar

1 evidentiary hearing for attorneys' fees, my client decided to
2 waive those fees so he could get the motion on foreclosure and
3 the judgment entered ASAP. So you'll see in the judgment of
4 foreclosure, the Court has a recital paragraph talking about
5 the waiver of those 310,000.

6 It then modified the proposed point of order under the
7 create-all (ph.) paragraph to conform to that waiver of
8 judgment of foreclosure attorneys' fees. The amount of
9 attorneys' fees that JGB is seeking, which is now well over a
10 million, has nothing to do with that judgment of foreclosure
11 pre-bankruptcy filing time frame. It is the fees and expenses
12 that are accrued for fighting with this debtor. And that is
13 not before the state court. It couldn't be before the state
14 court because you've beaten essentially an advisory ruling.
15 There is no res adjudicata, collateral estoppel (indiscernible)
16 case or otherwise.

17 So yes, Your Honor hit it right on the head. To the
18 extent that we are over secured as to this debtor, we need to
19 demonstrate what our claim is and be paid what is appropriate
20 under the Bankruptcy Code. To the extent we're undersecured
21 creditor, we may not get that. But we do have a second lien.
22 A second lien goes on 376 Ginn Lane. That is not before Your
23 Honor.

24 So to the extent that the debtor believes that it's
25 going to somehow use this Bankruptcy Court to whittle down JGB

1 rights, again, I would caution them, they do not have the right
2 to eviscerate the continued fees and expenses that are due
3 under the mortgage instrument post-judgment of foreclosure and
4 sale, including, Your Honor -- and this is going to be a big
5 issue when we come to the final signoff and potential release.
6 If the debtor continues to allege, as they do, that they're
7 somehow going to go after JGB, we are going to seek indemnity
8 reserve that we are entitled to. And this case
9 (indiscernible), Your Honor, concerning adequate protection of
10 a secured letter's indemnity rights even if they're contingent.

11 So if the debtor is really, really intent on making
12 peace, then it should do what Your Honor has said, which is pay
13 us off. And if they win in state court, come back to us. If
14 they continue to litigate with us, they litigate it at their
15 own peril with increased fees and expenses to be charged to
16 both the estate and the nondebtor estate. I want to be crystal
17 clear, because throughout your motion papers, they keep
18 hammering that somehow JGB has been anything less than trying
19 to follow the terms and conditions of the loan documents that
20 were signed in 2018, '19.

21 THE COURT: So as I've done in -- some number, more
22 than five and less than 100 of other real estate sale, some
23 commercial, some residential. The letter that I'm going to
24 have the debtor and the secured creditor jointly file by
25 October 19th, that's a week before the hearing and it's two

1 weeks from today, I think, or just under two weeks from today,
2 here's the undisputed amounts. Now, if -- the debtor may want
3 to characterize undisputed meaning without prejudice and appeal
4 rights because they've got an appeal pending, et cetera, then
5 find another adverb.

6 But here are the amounts that the parties agree are
7 presently due under the foreclosure judgment and applicable
8 law, bankruptcy or nonbankruptcy. Here are the amounts and
9 categories that we dispute. And then I'll know when you-all
10 roll in here on October 26th how much is not in dispute as I've
11 defined it, how much is in dispute as I've defined it. I can
12 figure out a mechanism to deal with that come October 26th, if
13 there's actually money available to make that more than an
14 academic exercise. Fair enough?

15 MR. KANOWITZ: Thank you, Your Honor. Understood
16 completely.

17 MS. SIMMONS: Yes, Your Honor. And then I guess from
18 the last hearing, we realize we need to ask better questions.
19 In terms of your position, Your Honor, are you telling the
20 debtor that the only objection we can make to JGB's claims that
21 have been filed, their proof of claims, is that we can just
22 argue that -- which is the case that they filed duplicate
23 claims and no other justifications or arguments can be put
24 forward in an objection to their proof of claims that have been
25 filed?

1 THE COURT: I'm not giving you advisory rulings. What
2 I'm telling you is from my vantage point, since the order to
3 make this anything more than an academic exercise and not have
4 continued litigation over how much the math is, the governing
5 instrument that I work from, as I have in many, many, many
6 other cases, is the state court foreclosure judgment and then
7 applicable state and bankruptcy law that allows those amounts
8 to the extent allowed to increase after the date the judgment
9 is entered.

10 So if you have some other objection that you want to
11 bring that's other than a math objection, I'm not foreclosing
12 it. What I'm telling you is that if the debtor wants to avoid
13 the foreclosure sale from happening on or around for November
14 14, 2022, it's going to need to have ready access to the amount
15 of funds that you all are going to calculate and put forth in
16 that letter.

17 And then I'll decide what to do with payment of the
18 disputed amounts when this actually gets interesting enough to
19 make that decision, because right now it's a whole lot of talk
20 about we're actually going to do something that you haven't
21 done yet. And so when there is money going to actually fund
22 it, then I'll make that next decision of how much of that gets
23 paid versus it's held in escrow versus, et cetera.

24 But I am not, not litigating anything that the state
25 court has already decided. I think I've been crystal clear

1 about that.

2 All right. The Court is going to issue a pre-hearing,
3 contested matter of scheduling order for the October 26th
4 hearing, as we did for the August 31st hearing. The notable
5 differences there are, 1, it will be in-person here in my
6 courtroom in central Islip.

7 2, I do continue to operate under COVID-19 health and
8 safety protocols, which requires the party to email the Court,
9 not file on the docket, but to email the Court the vaccination
10 status of any witness and attorney who may be -- or the person
11 may be present for the in-person hearing. I do that to help
12 shape and shape my trial protocols, as well as in-courtroom
13 safety protocols, social distancing, things of that of that
14 nature.

15 That will be contained in the contested matter,
16 scheduling order that you're going to see, which will make
17 clear when the affidavits are due, when the documents need to
18 be exchanged, when to email the Court through the address will
19 provide with that vaccination status. Don't send us
20 vaccination cards. Don't follow the vaccination status on the
21 docket. I don't publicly disclose that. But again, I need to
22 know so that I can set my in-courtroom protocols. All right?
23 All right.

24 So then we'll be adjourned until October 26th at 11:30
25 on the DIP motion and the creditor motion to dismiss. We'll

1 look for of order from today's hearing.

2 MR. KANOWITZ: One last clarification, Your Honor,
3 not to continue the hearing, if you will. But the debtor has
4 the exclusivity motion on. Clearly to the extent that there
5 was noncompliance, it was going to terminate. The debtor filed
6 the plan. What, if anything, should we do concerning the
7 debtor's exclusivity rights? Our view is that this plan is
8 dead on arrival, but we don't need to argue why. So we don't
9 believe exclusivity should continue. It's not like we're going
10 to go run out and file a plan, competing plan, because of all
11 the other things that we have going for us in this case. But
12 we do need to tidy up the docket, if you will.

13 THE COURT: I've not set at a confirmation hearing.
14 It's already October 6th. And the next hearing is October
15 26th. So I don't know that I need to giving guidance on that,
16 unless you're going to tell me you've got a competing plan in
17 your word processor and you want to hit send as soon as the
18 hearing is over.

19 So again, because I've not determined whether or not
20 the debtor met the three elements of the sale and lift stay
21 order, I'm not prepared to say the exclusivity continues in
22 effect or has been extended or not. But I again, I don't know
23 that that's anything more than academic at this point.

24 MR. KANOWITZ: We agree. We will abide by the
25 nebulous time frame between now and the 26th concerning whether

BRICKCHURCH ENTERPRISES, INC.

32

1 or not we need to file a competing plan or ask for permission
2 to do so.

3 THE COURT: All right. All right. Very well. The
4 Court will be adjourned on Brickchurch Enterprises. We'll be
5 in recess until 1 o'clock. Thank you all.

6 (Whereupon these proceedings were concluded at 11:50 AM)

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I N D E X

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denied.

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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



Michael Drake (CER-513, CET-513)
AAERT Certified Electronic Transcriber
eScribers
7227 North 16th Street, Suite #207
Phoenix, AZ 85020

Date: October 12, 2022

Brickchurch Enterprises, Inc.
Main Case No. 22-70914-ast

October 6, 2022

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